

IN THE UTAH COURT OF APPEALS

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Brenda Muggleston,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20090186-CA
v.)	
)	
Department of Workforce)	F I L E D
Services, Workforce Appeals)	(June 4, 2009)
Board,)	
)	2009 UT App 151
Respondent.)	

Original Proceeding in this Court

Attorneys: Brenda Muggleston, Tooele, Petitioner Pro Se
Susan Pixton, Salt Lake City, for Respondent

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Brenda Muggleston petitions for review of the Workforce Appeals Board's (Board) decision affirming a finding of fault and an assessment of a fraud overpayment penalty. This is before the court on its own motion for summary disposition due to the lack of a substantial question for review. We affirm.

Muggleston asserts that there was not substantial evidence to support a finding of fraud and the corresponding penalty. This court will reverse an administrative agency's findings of fact "only if the findings are not supported by substantial evidence." Drake v. Industrial Comm'n, 939 P.2d 177, 181 (Utah 1997).

Claimants for unemployment benefits who file based on false information and thus receive benefits to which they are not entitled are required to repay the amounts received. See Utah Code Ann. § 35A-4-405(5)(c) (Supp. 2008). In addition to repaying the amounts received, the claimant must pay a civil penalty equal to the benefits received "by direct reason of his fraud." Id. § 35A-4-405(5)(c)(ii). The Board has no discretion to reduce or waive the fraud penalty once fraud is shown. See id.; Utah Admin. Code R994-406-403(1).

Under department rules, "[f]raud requires a willful misrepresentation or concealment of information for the purpose of obtaining unemployment benefits." Utah Admin. Code R994-406-401(2). To establish fraud, the department must show materiality, knowledge, and willfulness. See id. R994-406-401(1). Materiality is established when a claimant makes a misrepresentation for the purpose of obtaining any benefit to which the claimant is not entitled. See id. R994-406-401(1)(a). Knowledge is established when the claimant knew or should have known that the information submitted to the department was incorrect, or that she failed to provide required information. See id. R994-406-401(1)(b). "Willfulness is established when a claimant files claims or other documents containing false statements, responses or deliberate omissions." Id. R994-406-401(1)(c). These elements establish fraud for the purposes of assessing the fraud penalty: no specific intent to defraud is required. See id. R994-406-401(3).

The Board had substantial evidence to support the finding of fraud. Mugleston acknowledged that she filed incorrect information in stating that she did not work during the weeks at issue. Her misrepresentations resulted in receiving benefits to which she was not entitled. Accordingly, materiality was established. Second, although Mugleston asserts that she did not knowingly submit incorrect information, she was accountable for the information in the claimant guide and the information presented to her in the initial claim instructions. Both the guide and the initial instructions notified Mugleston that she was required to report work performed, regardless of when she was paid for such work. Accordingly, Mugleston knew or should have known that the information submitted was incorrect. And third, willfulness was established by the filing of the claims containing false information. The record contains substantial evidence supporting each element. Accordingly, the Board did not err in affirming the finding of fraud and the assessment of the penalty.

Affirmed.

Russell W. Bench, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge